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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

Misc. No.

WILLARD O. ALLEN, *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

The petitioner, Willard O. Allen, by his attorneys, Philip J. Hirschkop and Alan J. Cilman, respectfully prays for a Writ of Certiorari to the Supreme Court of Virginia to reverse its decision affirming the judgment of the Circuit Court for the County of Bedford, Virginia.

OPINION BELOW

The opinion of the Supreme Court of Virginia is unreported but is appended hereto.

JURISDICTION

The judgment of the Supreme Court of Virginia was entered on March 19, 1973. An order extending time to file Petition for Writ of Certiorari to August 16, 1973, was entered by the Chief Justice on June 14, 1973. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED FOR REVIEW

I. Are Sections 54-524.80 and 54-524.101 of the 1950 Code of Virginia unconstitutional, as being in violation of the due process and equal protection provisions of the United States Constitution, because they make an unreasonable distinction between marijuana and hashish?

II. Are Sections 54-524.80 and 54-524.101 of the 1950 Virginia Code unconstitutional as constituting Cruel and Unusual Punishment, in violation of the Eighth and Fourteenth Amendments?

III. Is there a right to personal autonomy and privacy allowing an individual to purposely induce in himself, in private, a mild hallucinatory mental condition through the use of Cannabis Sativa, in particular, the preparations of marijuana and hashish?

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I.

> "Congress shall make no law . . . abridging the freedom of speech."

United State Constitution, Amendment VIII.

> " . . . nor cruel and unusual punishments inflicted."

United States Constitution, Amendment XIV.

> ". . . ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATUTORY PROVISIONS

Code of Virginia, 1950, as amended.

Section 54-524.80	(See Appendix)
Section 54-524.101	(See Appendix)

STATEMENT OF THE CASE

On Sunday, December 5, 1971, a neighbor of the defendant was walking through a wooded area adjoining the property of the defendant when he came upon a stone crock upside-down on the ground which, it later developed, contained marijuana, hashish and amphetamine sulfate. The location of the stone crock or jar was approximately one hundred and twenty-five (125) feet from the residence in which the defendant and his wife and his mother lived and was approximately eighty (80) feet from the margin of Virginia State Highway #647, which highway passes by in front of the defendant's home and the adjoining, heavily wooded area in which the jar was found. The neighbor picked up the crock and carried it to his home, walking along the street or highway in front of the Allen home for a distance of approximately two hundred (200) feet in broad daylight with the crock in full view in his hands.

The neighbor called the Bedford County Sheriff's Department and officers were sent to the neighbor's home that afternoon, at which time they inspected

the crock and determined that it probably contained narcotics. The neighbor and the deputies then returned to the wooded area and the neighbor pointed out to the officers where he had found the jar and the jar with the drugs inside was placed in the approximate same position where it was found. The officers then took up surveillance of the area from a spot on the opposite side of the road or said highway from the location of the crock.

On December 7, 1971, at approximately 3:55 p.m., the defendant came out of the rear of his residence and walked into the wooded area and picked up the stone crock and turned and started back toward his home, at which time the officers ran across the road and arrested the defendant.

The entire area where the crock was found was covered with numerous "dog paths" and there was no ascertainable path leading to the location of the crock or anywhere else in the area. The jar was sitting more or less in the open, visible from a distance of about (20) feet away.

When the defendant picked up the crock and carried it towards his home, he did not attempt to hide it in any fashion but carried it openly in his hands and made no attempt to look to see if anyone was watching him during this entire period.

The defendant's mother testified that she had a day or two previously seen "something white" in the woods from her bedroom window and that she had asked her son, the defendant, to check and see what it was. This testimony was not contradicted. Neither was the testimony of the defendant that he was taking the crock into the house to call the police. There

is no evidence that the defendant ever planned to use or distribute any of the drugs.

REASONS FOR GRANTING THE WRIT

I. Equal Protection and Due Process

Sections 54-524.80 and 54.524.101 of the 1950 Code of Virginia are unconstitutional, in violation of the due process and equal protection provisions of the United States Constitution, because they make an unreasonable distinction between marijuana and hashish, deeming one in possesion of marijuana, a Schedule I controlled drug, guilty of a misdemeanor punishable by confinement in jail not to exceed twelve months, and deeming one in possession of all other Schedule I drugs, which includes heroin, morphine and opium, as well as hashish, to be guilty of a felony and imprisoned in the State Penitentiary for not less than one nor more than ten years.

To classify marijuana and hashish with "hard core" narcotic drugs such as heroin, morphine and cocaine violates the Equal Protection Clause of the United States Constitution and to punish private possession of hashish equally with that of the narcotic drugs heroin, morphine and cocaine rather than with marijuana constitutes cruel and unusual punishment, in violation of the Eighth Amendment to the United States Constitution, incorporated and applied to the states under the Due Process Clause of the Fourteenth Amendment.

The issue under consideration is whether the categorization of marijuana and hashish with the "hard" narcotics heroin, cocaine and opium and the punishment of simple possession of hashish as a felony,

with the same penalty as possession of narcotics, is denial of Equal Protection of law due to an unreasonable classification.

The United States Congress has been concerned with the properties and effects of marijuana in connection with H.R. 14012, a bill to provide for the establishment of a commission on marijuana. S. F. Yolles, M. D., Director of the National Institutes of Mental Health, appeared before the Subcommittee on Public Health and Welfare of the Interstate and Foreign Commerce Committee on September 17, 1969. His testimony established quite clearly that "In the past, dangerous drugs were grouped arbitrarily, sometimes by historical accident rather than with regard for their differing characteristics and their specific and distinct effects." He continued by outlining present scientific knowledge concerning the characteristics of marijuana and hashish, stating

> There is total agreement among competent scientists and physicians that marijuana is not a narcotic drug like heroin or morphine but rather a mild hallucinogen. To equate its risks—either to the individual or society—with the risks inherent in the use of hard narcotics is netiher medically nor legally defensible.

Marijuana and hashish are two of the preparations of the Cannabis Sativa, or Indian Hemp Plant, and all preparations of the plant share the same active ingredient. (Kaplan, John, Professor of Law, Stanford University, *Marijuana, The New Prohibition,* (Pocket Books, 1972) p. 55). The psychoactive ingredient of Cannibis Sativa has been isolated as two isomers of tetrahydrocannabinol (THC). The psychoactive strength of the drug varies greatly with the

part of the plant used, quality of the seed stock, and the growing conditions. (Grinspoon, L., MD, *Marijuana Reconsidered*, (Bantam ED., 1971,) pp. 39-40). The amount of THC present determines the potency of the preparation. The drug content of the plant parts is variable, generally decreasing in the following sequence, resin, flowers, leaves. Marijuana is the least potent preparation of the plant. Jamaican marijuana, containing primarily the flower tops, has a THC content of about 4% to 8%. Large quantities of marijuana available in the United States comes from Mexico and has a THC content of less than 1% Generally, the THC content of hashish is 5% to 12%. (*Marihuana: A Signal of Misunderstanding,* First Report of the National Commission on Marihuana and Drug Abuse, March 1972, p. 50.)

Variance of both quality and availability of marijuana and hashish is indicated by the testimony of Mr. J. Leon Reynolds, Drug chemist for the Virginia Board of Pharmacy at the trial of petitioner below. This testimony is evidence given by an employee and witness for the Commonwealth of Virginia and his uncontradicted testimony relates to the quality of hashish and marijuana for which petitioner was convicted.

> Q. Now as far as the hashish is concerned, this particular hashish was not as potent as the marijuana?
>
> A. According to my analysis, which indicates the potency of the drug, it was not.
>
> Q. The effect of this particular hashish would be no more potent than marijuana, is that correct?
>
> A. Yes, sir.

> **Q. Then, if marijuana is not a narcotic drug, we will assume this particular hashish would not have as much effect as a narcotic drug.**
> **A. No, sir, neither of these drugs, hashish or marijuana, is a narcotic drug.**

Transcript, p. 72.

The petitioner was convicted of the possession of 0.485 grams of hashish, a Schedule I drug and sentenced to a term of four years confinement in the Virginia State Penitentiary, and convicted of the possession of 170.2 grams of marijuana, a Schedule I drug classified as a misdemeanor offense, and assessed a fine of Five Hundred Dollars ($500.00), yet it was conceded that the marijuana was more potent than the hashish.

Consideration of the scientifically observed physical and psycho-motor effects of marijuana or hashish indicates that it is overall, the least dangerous mind-altering drug. Observed physical effects of THC include dryness of the mouth and throat, slight increase in pulse rate, and slight conjunctival reddening of the eyeball. (Interim Report of the Canadian Government Commission of Inquiry, *Non-Medical Use of Drugs, Penguin* ed. 1970, p. 122.) No known tolerance develops to marijuana, in fact negative tolerance has been observed, that is, a decreased amount of the drug taken on subsequent occasions produces the same level of physical and euphoric effect. (Canadian Commission Report, p. 122). No physical dependency is produced by use of the drug and, hence, there are no withdrawal symptoms or "abstinence syndrome" when the drug is unavailable to the user. (Canadian Commission Report, p. 123).

Donald E. Miller, Chief Counsel of the Bureau of Narcotics and Dangerous Drugs himself has argued in "The Problems of the Prosecutor in the Marijuana Controversy," paper presented to the National District Attorney's Association Conference, March 16, 1968:

> Whether a person is using the so-called "Mexican type" marijuana or the more potent "hashish" the potential for abuse is ever present. The only difference is that a user of hashish will not need to smoke as much to reach the desired result. But make no mistake about it, a person can continue the intake of the weaker substance and attain the same result as the person using "hashish."

In the most comprehensive British study, *Cannabis,* Report by the Advisory Committee on Drug Dependence, London, 1968, sometimes referred to as the Wootton Committee Report, it was stated that in the United Kingdom, the taking of cannabis has not so far been regarded even by the severest critics, as a direct cause of serious crime. (*Cannabis,* p. 14). This is especially noteworthy since, in Britain, the major cannabis product is not the vegetable marijuana common to the United States, but the resinous hashish, (*Cannabis,* p. 13). According to the Wooten Report, the hashish used there is no more a danger than marijuana is in the United States. (Kaplan, J., *Marijuana, The New Prohibition,* p. 309).

Both the Opiates and alcohol provide a dramatic contrast to the lack of physical harmfulness of marijuana. With the Opiates (opium, heroin, morphine, condeine), high levels of tolerance develop (Canadian Commission Report, p. 43), severe physical addic-

tion results from repeated use (Canadian Commission Report, pp. 153-154), and deaths resulting from overdosage occur. (Canadian Commission Report, p. 151; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: *Narcotics and Drug Abuse,* p. 54). Occasional social use of alcohol in moderate dosage as a mind-altering drug has few deleterious physical consequences. However, tolerance does develop in alcohol use and the drug is subject to acute and chronic abuse. (Canadian Commission Report, pp. 43, 70-72). Acute alcohol abuse can lead to death from overdosage. (President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Drunkeness* (1967), p. 35.) Chronic alcohol abuse leads to alcoholism where a clear withdrawal is observable (an easily discernible physical shaking and later delirium tremens), and death of brain cells, mental deterioration and cirrhosis of the liver may occur. (President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Drunkenness,* p. 35; J. Kaplan, *Marijuana: The New Prohibition,* Pocket Book ed. 1971, pp. 275-320, specifically p. 318.)

There is no reliable scientific evidence demonstrating that chronic psychosis can be caused by marijuana use (British Report, p. 16) in dramatic contrast to the American experience with alcohol. (Canadian Commission Report, p. 69); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Drunkenness,* 1967, p. 35). Finally, the "stepping stone argument" that marijuana use leads to use of addicting drugs has no scientific basis. (The President's Commission on Law

Enforcement and Administration of Justice, *Task Force Report: Narcotics and Drug Abuse,* p. 13-14.)

The danger of hashish is no greater to the user or society than that of marijuana, and the danger of marijuana or hashish is not at all comparable to that of opiates or even to that of most of the depressant or stimulant drugs listed in Schedule I, Section 54-524.80, Va. Code. It is totally irrational to require that a person, such as petitioner, who was convicted for private possession of a minute quantity of hashish, be imprisoned for at least four times and potentially ten times longer than one possessing a much greater quantity of marijuana and for the same term as possessors of heroin and other hard narcotics. When the consequence of this groundless and erroneous classification is a sentence of four years rather than a maximum of twelve months (with possibility of imposition of a fine as an alternative), defendant's constitutional right under the Due Process and Equal Protection Clauses have been violated. *Connolly* v. *United Sewer Pipe Company,* 184 U.S. 540 (1902); *McLaughlin* v. *Florida,* 379 U.S. 184 (1964); *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942).

Recent cases have outlined a stricter test in certain areas involving interpretation of the Equal Protection Clause. These cases have held that when a fundamental constitutional right is in question, any classification which penalizes the exercise of that right is unconstitutional unless it is necessary "to promote a compelling governmental interest." *Shapiro* v. *Thompson,* 394 U.S. 618, 634.

In *People* v. *McCabe,* 275 N.E. 2nd 407 (1971), the Illinois Supreme Court, in what appears to be the first

decision of this kind, found that authorities are in agreement that marijuana, although classified in Illinois as a narcotic, is much more similar to Barbiturates, Amphetanines, and the Hallucinogens. In Illinois, the penalty for the sale of this group was considerably more lenient than that for the sale of narcotics. The Court reversed the Defendant's conviction for the sale of marijuana, ruling that its classification as a narcotic offended the Equal Protection of both the State and Federal Constitutions.

In *People* v. *Sinclair,* 387 Mich. 91, (194 N.W. 2d 878, 1972), the Michigan Supreme Court considered the minimum sentence of nine and one-half years imposed on the Defendant, who was found guilty of the possession of two (2) marijuana cigarettes. The majority opinion held this minimum sentence was cruel and unusual punishment in violation of the United States and Michigan Constitution, and reversed the conviction. The concurring opinion filed by two of the justices challenged the categorization of marijuana with hard drugs and argued that the imposition of the same penalty for use was a denial of equal protection of laws because of unreasonable classification.

II. Cruel and Unusual Punishment

Are Sections 54-524.80 and 54-524.101 of the 1950 Code of Virginia unconstitutional as constituting cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, as they classify hashish with dangerous narcotics and provide for similar punishment for the possession of all these drugs, except for

marijuana, which is classified as a misdemeanor and from which hashish is erroneously distinguished.

Petitioner was tried and convicted under Section 54-524.101 of the Virginia Code which designates possession of hashish as a felony, punishable similarly to heroin, morphine or opium, by imprisonment in the state penitentiary for not less than one nor more than ten years. Petitioner was sentenced to four years in the state penitentiary. Hashish should be correctly categorized as a preparation of Cannabis Sativa with the same properties as marijuana, and it is unreasonable to more harshly penalize private possession of hashish than private possession of marijuana. Petitioner was tried and convicted under Section 54-524.101 for possession of marijuana which is classified as a misdemeanor offense, and assessed a fine of five hundred dollars, yet it was conceded by expert testimony that quantitatively petitioner possessed three hundred and fifty times more marijuana than hashish and qualitatively, an equal amount of the marijuana petitioner possessed was more potent than an equal amount of hashish petitioner possessed.

This case is controlled by the principle announced in *Weems* v. *United States,* 217 U.S. 349 (1910), that there must be some rational relationship between the conduct of the defendant and the punishment imposed upon him. The court observed that the Cruel and Unusual Punishment Clause ". . . in the opinion of the learned commentators may be therefore progressive, and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." (217 U.S. at 378). More recently, this was reiterated by the United States

Supreme Court in *Trop* v. *Dulles,* 356 U.S. 86, 101 (1958); *Robinson* v. *California,* 370 U.S. 660 (1966); see also, *People* v. *Sinclair,* 194 N.W.2d 878, *supra.*

III. Right of Privacy

A crucial issue in this case is whether a person has a constitutionally protected right purposely to induce in himself, in private, a mild hallucinatory mental condition through the use of Cannabis Sativa, in particular, the preparations marijuana and hashish. Such a right should be based upon the constitutional rights to personal autonomy and privacy, guaranteed by the due process clause of the Fourteenth Amendment of the United States Constitution.

The individual who uses marijuana does so as a matter of personal choice, in the pursuit of a multiplicity of goals which may include a desired relief from tension, the heightening of perception, and the desire for personal and spiritual insights. Grinspoon L. M.D., *Marihuana Reconsidered,* 176 (1971); J. Kaplan, *Marijuana—The New Prohibition,* 73-74 (1970); M. Town, "Privacy and the Marijuana Laws," reprinted in *The New Social Drug,* 129-30 (1970); Watts, Psychedelics and Religious Experience, 56 Calif.L.Rev. 74, 76-79 (1968).

Marijuana produces experiences affecting the thoughts emotions and sensations of the user, experiences which by nature are mental and as such are included among the most personal and private experiences possible.

Testimony of experts in the field of cannabis in courts throughout our judicial system substantiates

the opinion of scholars in the field that harm to the user of marijuana or hashish is not a conclusive fact, but speculative, and at most a slight risk, considerably less than the risk associated with alcohol abuse. (Grinspoon, L. *supra* at p. 347). It is no longer the contention of knowledgeable experts that use of cannabis may contribute to the commission of crime, nor is it substantiated by any empiricial studies or data that use of cannabis leads one to try narcotic drugs.

In our system of law, the personal autonomy and privacy of an individual is afforded the highest consideration. The very concept of limited government evinces a desire to free the individual from the unbounded control of the State, in order that they may most productively pursue their own life goals. High respect for the privacy of the individual, the right to be let alone and live one's life as one chooses, so as to exert one's individuality and human dignity, free from assault, intrusion or invasion except as can be justified by the clear needs of community living, under a government of law, is one of the characteristics which distinguish the democratic governments from those that are totalitarian or dictatorial.

A precise and cogent articulation of these values was given by Mr. Justice Brandeis in his now famous dissenting opinion in *Olmstead* v. *United States*, 277 U.S. 438, 478 (1925), quoted with approval in *Stanley* v. *Georgia*, 394 U.S. 577, 564 (1969):

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intel-

> lect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in material things. They sought to protect Americans in their *beliefs,* their *thoughts,* their *emotions* and their *sensations.* They conferred, as against the Government *the right to be let alone*—the most comprehensive of rights and the right most valued by civilized men. (emphasis added)

Due process of law encompasses a fundamental right of privacy *Roe* v. *Wade,* —— U.S. —— (1973); (*Griswold* v. *Connecticut,* 381 U.S. 479, 494 (1965)); *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925); *Meyer* v. *Nebraska,* 262 U.S. 390 (1923).

Given the present degree of knowledge concerning cannabis, the principle expressed by the United States Supreme Court in *Stanley* v. *Georgia,* 394 U.S. 577, 566-67 (1969), which held that the mere private possession of obscene materials cannot constitutionally be made a crime, is applicable to the prosecution of petitioner for the private possession of hashish and marijuana, both preparations of cannabis.

Where conduct is public in nature, and does not involve fundamental liberties, society has a greater claim to the right of control and the state need not show as compelling an interest in its prohibition. However, the use of Cannabis Sativa, in private, involves an issue of "fundamental liberty" and a different standard of review should be applied to the statute. The state cannot prevail except under the test described by Mr. Justice Goldberg in his concurring opinion in *Griswold* v. *Connecticut,* 381 U.S. 479, 497 (1965):

> In a long series of cases this Court has held that where fundamental personal liberties are involved,

> they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling," *Bates* v. *Little Rock,* 361 U.S. 516, 524. The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida,* 379 U.S. 184, 196. See *Schneider* v. *Irvington,* 308 U.S. 147, 161; *Roe* v. *Wade,* —— U.S. ——, (1973 Abortion.)

As stated by Justice Levinson in his dissenting opinion in *State* v. *Kantner* (Hawaii), 493 P.2d 306(1972), this analysis does not establish the court as a superlegislature, exercising veto power over the wisdom or value of legislative policies, (*Griswold* v. *Connecticut,* 381 U.S. 479, 512), as criticism which attempts to deter courts from inquiring into the constitutionality of laws ought to distinguish between legislation which seeks to regulate economic and social relationships and that which intrudes into the purely private sphere of human life. In the former instance, courts grant the legislature wide latitude for experimentation in the promotion of the general good. However, where the state endeavors to intrude into the individual's private life and regulate conduct having no public significance, particularly where, as here, that conduct is peripheral to more specific fundamental rights falling under protection of the First Amendment, in particular, guarantees of freedom of speech, a compelling state interest must be discerned.

CONCLUSION

For these reasons, a Write of Certiorari should issue and the decision of the Supreme Court of Virginia should be summarily reversed.

Respectfully submitted,

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August 16, 1973

APPENDIX

APPENDIX

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 19th day of March, 1973.

The petition of Willard Ormond Allen, Jr., for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Bedford County on the 22nd day of May, 1972, in a prosecution by the Commonwealth against the said petitioner for a felony, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgment complained of, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,
Teste:
HOWARD G. TURNER, Clerk

By: STARKLEY D. GARDNER
Deputy Clerk

Code of Virginia of 1950 as Amended

§ 54-524.80. Schedule I.—In determining that a drug shall be listed within Schedule I, the Board shall find:

(1) A high potential for abuse, and

(2) No accepted medical use in the United States.

(a) Any of the following drugs, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers esters, ethers and salts is possible within the specific chemical designation, are included in Schedule I:

(1) Acetylmethadol.
(2) Allylprodine.

(3) Alphactylmethadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazine.
(12) Dextramoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethyliambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethyliambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Noripipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.

(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

(b) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetylcodone.
(2) Benzylmorphine.
(3) Codeine methylbromide.
(4) Codeine-N-Oxide.
(5) Desomorphine.
(6) Heroin.
(7) Hydromorphinol.
(8) Methyldesorphine.
(9) Methylhydromorphine.
(10) Morphin methylbromide.
(11) Morphine methylsulfonate.
(12) Morphine-N-Oxide.
(13) Myrophine.
(14) Nicocodeine.
(15) Nicomorphine.
(16) Normorphine.
(17) Thebacon.

(c) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Bufotenine.

(2) Diethyltryptamine.

(3) Dimethyltryptamine.

(4) 4-methyl-2, 5-dimethoxyamphetamine.

§ 54-524.101. Unlawful acts; penalties.—(a) Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally:

(1) To distribute, or to possess with intent to distribute, a controlled drug;

(2) To manufacture a controlled drug.

A conviction for a violation of this § 54-524.101 (a) may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed.

(b) Any person convicted of a violation of this section with respect to:

(1) Any drug classified in Schedule I, II or III shall upon conviction be imprisoned in the penitentiary for a period not less than one nor more than forty years, or fined not more than twenty-five thousand dollars, or both. For a second or any subsequent violation of § 54-524.101 (a) with respect to any drug classified in Schedule I, II or III, or where in case of a first conviction of violation of § 54-524.101 (a) with respect to any drug classified in Schedule I, II or III the defendant shall previously have been convicted of a violation of any law of the United States, or of this or any other state, territory or district, relating to the distribution or manufacture of any drug classified in Schedule I, II or III, and such violation would be punishable in this State if the offending act had been committed in this State, the defendant shall be imprisoned in the penitentiary for life or not less than ten years or fined not more than fifty thousand dollars, or both.

Provided, further, that if the violation of the provisions of this article consist of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharma-

cist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a misdemeanor and be punishable only by a fine not in excess of one hundred dollars.

(2) Any drug classified in Schedule IV or Schedule V shall upon conviction be confined in jail for not more than one year, or fined not more than one thousand dollars, or both. For a second or any subsequent violation of § 54-524.101 (a) with respect to any drug classified in Schedule IV or V, or where in case of a first conviction of violation of § 54-524.101 (a) with respect to any drug classified in Schedule IV or V, the defendant shall previously have been convicted of a violation of any law of the United States, or of this or any state, territory, or district, relating to the distribution or manufacture of any drug classified in Schedules I, II, III, IV or V, and such violation would be punishable in this State if the offending act had been committed in this States, the defendant shall be imprisoned in the penitentiary for a period not less than one nor more than five years or, in the discretion of the jury or the court trying the case without a jury, may be confined in jail not exceeding twelve months and fined not more than ten thousand dollars.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled drug unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person convicted of a violation of this subsection with respect to a drug classified in Schedule III or the controlled drug marijuana shall be deemed guilty of

a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or shall be confined in jail not exceeding twelve months, or both. Any person convicted of a violation of this subsection with respect to a drug classified in Schedule I or Schedule II other than the controlled drug marijuana shall be deemed guilty of a felony and imprisoned in the penitentiary for not less than one year nor more than ten years or, in the discretion of the jury or the court trying the case without a jury, may be confined in jail not exceeding twelve months and fined not more than five thousand dollars.

For a second or any subsequent violation of § 54-524.101 (c) with respect to any drug classified in Schedule I, II or III, or when in the case of a first conviction of violation of § 54-524.101 (c) with respect to any drug classified in Schedule I, II, or III, the defendant shall previously have been convicted of a violation of any law of the United States, or of this or any other state, territory or district, relating to the distribution or manufacture of any drug classified in Schedule I, II, or III, and such violation would be punishable in this State if the offending act had been committed in this State, the defendant shall be imprisoned in the penitentiary for not less than two years nor more than twenty years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail not exceeding twelve months and fined not more than ten thousand dollars.